

Economic Development Committee Meeting

Sullivan Chamber: Wednesday, November 18, 2015 at 10 am

The Economic Development and University Relations Committee will conduct a public hearing to continue discussions around the need for establishing a wage theft ordinance.

- i. Opening Remarks from Councilor Simmons**
- ii. Remarks From Greater Boston Labor Council, AFL-CIO and from Community Labor United representatives**
- iii. Remarks from Committee Members**
- iv. Public Comments**
- v. Councilor Simmons Closing Remarks**
- vi. Meeting Concludes**

Cambridge Wage Theft Ordinance

Summary of Draft Language for Cambridge Ordinance 11/18/15

Section 5.01.012

- **Office of Wage Theft Prevention (OWTP)**
- Dedicated to the implementation and oversight of the City's Wage Theft Prevention activities (including community outreach, complaint intake and resolution, oversight, and coordination)
- Executive Director will run the office, is responsible for staffing the office, and reports to the City Manager
- Advisory Council will be established with representation from the Greater Boston Labor Council, the Immigrant Worker Center Collaborative, community organizations, and the Chamber of Commerce, etc.
- Will receive notice preceeding any action on a license or permit issued by City Dept. and will notify the Depts. involved of any violations the applicant has had in the past 3 years

Section 5.01.013

- **Wage Bond Requirements for certain permits and licenses**
- Requires employers that have admitted in writing to a wage theft violation (or are otherwise found guilty of wage theft) within 3 years of license/permit application is required to obtain wage bond (or other insurance) equal to 1 yr wages for all employees for duration of license/permit

Section 5.01.014

- **Outreach to Community Organizations**
- The OWTP shall establish and maintain a community outreach program to work with communities impacted by wage theft, create industry-specific education materials for workers, and educational materials for employers. The OWTP will issue grants to organizations it partners with on outreach.

Cambridge Wage Theft Ordinance

Summary of Draft Language for Cambridge Ordinance 11/18/15

Section 5.01.015

- **Certifications and Disclosures**
- Every licensing, permitting, procuring, and contracting department in the City shall create a certification and disclosure requirement for applicants providing 1) they have not had a wage theft violation within the last 3 years, 2) alternatively disclosing past violation in the application, 3) departments must notify applicants that they have a duty to report violations

Section 5.01.016

- **City Procurement, City Contracts, and Debarment**
- Every RFP issued by the City must include certification and disclosure requirements, notify bidders of their duty to report violations, and notify bidders that they may not contract with the City if they have been debarred by the City or stat
- Successful bidders must provide certification of compliance, must post a notice accessible to all employees, and shall furnish monthly payrolls to City
- Any bidder that has had a violation within the last 3 years must obtain a wage bond/other form of insurance equal to 1 year of wages for all employees
- If a wage theft complaint is filed against a City Contractor, notice will be served and a hearing will be set. The City will issue an order to revoke the contract, suspend the contract, debar the contractor, or set conditions on future contracts with the city

Section 5.01.017

- **Severability**
- If any provision of this Chapter is held invalid or unenforceable by any court, such a holding does not invalidate or render unenforceable any other provisions

DRAFT

City of Cambridge, Massachusetts Municipal Code
CAMBRIDGE JOBS AND LIVING WAGE ORDINANCE

□ TITLE V – BUSINESS LICENSES AND REGULATIONS**CHAPTER 5.5 CAMBRIDGE WAGE THEFT PREVENTION ORDINANCE****5.01.010 TITLE AND PURPOSE**

This Chapter shall be known as the “City of Cambridge Wage Theft Prevention Ordinance.” The purpose of this Chapter is to assure that all workers in the City of Cambridge are paid, in full, for all hours worked on a timely basis and that Cambridge employers who pay their workers in compliance with applicable wage and hour laws are given an optimal environment to build and maintain their businesses and are not undercut by non-compliant employers.

The high cost of wage theft to the City, its business community, and its residents impedes the City’s economic development and the well-being of its communities. This Chapter is designed to facilitate the elimination of wage theft in the City by providing residents and other workers employed by City businesses and contractors doing business with the City information and assistance in accessing the protections of state wage and hour laws. This Chapter is also designed to bolster compliance with the City’s existing licensing and permitting requirements. Additionally, this Chapter is also designed to ease the burden of reporting violations faced by workers vulnerable to wage theft, particularly low income, immigrant, and/or workers with limited English proficiency.

(Ord. ___, Added,)

5.01.011 DEFINITIONS

For the purpose of this Chapter, the term:

(a) “Employee” shall mean a natural person who performs work for an employer operating within the geographic boundaries of Cambridge, but shall not include any bona fide independent contractor as defined by M.G.L. c. 149 s. 148B;

(b) “Employer” shall include any natural person or business, whether or not incorporated or unincorporated, who suffers or permits another to work (1) in the City of Cambridge, (2) under a contract to which the City of Cambridge or one of its Departments is signatory, or (3) who otherwise maintains a commercial presence in the City of Cambridge. This definition excludes:

1.) The United States or a corporation wholly owned by the government of the United States;

2.) The Commonwealth of Massachusetts, its subdivisions, and corporate bodies;

(c) "Employ," including as used in the term "employment," shall include to suffer or permit to work.

(d) "Independent contractor" shall have the same meaning as in G.L. c. 149, § 148B ("Massachusetts Independent Contractor Law") and any applicable regulations or advisory guidance implementing that statute.

(e) "Minimum wage" shall have the same meaning as defined in G.L. c. 151 § 1;

(f) "Overtime" shall have the same meaning as defined in G.L. c. 151 § 1A;

(g) "Prevailing wage" shall have the same meaning as defined in G.L. c. 149 §§ 26-27H;

(h) "Timely Payment of Wages" is defined by G.L. c. 149 § 148.

(i) "Wage" shall have the same meaning as defined by G.L. c. 149, §148;

(j) "Wage Theft" is defined as any action by an Employer, his officers, agents, or employees causing Employer not to make a timely and /or complete payment of wages, prevailing wage, or overtime earned and owing to an employee;

(k) "Application" shall mean an initial application or a renewal of a license or permit;

(l) "City Contractor" shall mean an Employer who holds or seeks to hold a contract for goods, services, or labor with the City of Cambridge.

5.01.012 OFFICE OF WAGE THEFT PREVENTION

5.01.012-1 Purpose

The purpose of the Office of Wage Theft Prevention ("OWTP") is to minimize damage to the City's economy and economic development caused by wage theft as defined in this Chapter. OWTP shall provide a "central address" for the implementation and oversight of the City's Wage Theft Prevention activities, including but not limited to community outreach, complaint intake and resolution, coordination with other City departments as set forth below, oversight and performance of this Ordinance's provisions relative to City procurement as set forth below, and cooperation and coordination with the Commonwealth's Office of the Attorney General on issues of common concern. The OWTP shall also develop guidance, policies, and recommendations from time to time in connection therewith. The OWTP may also take on additional duties related to and advancing the purposes of this Ordinance at the request of the City Manager.

5.01.012-2 Executive Director and Staffing

One Executive Director shall oversee and manage the operations of the OWTP. The Executive Director shall be responsible for staffing the OWTP in accordance with applicable City of Cambridge hiring procedures and for overseeing all OWTP programs and activities.

The Executive Director shall report to ____ the City Manager's Office.

Staffing for OWTP shall include sufficient personnel to fulfill the purposes of this Ordinance and duties of the OWTP as set forth below, including, but not limited to, dedicated personnel charged with the outreach, compliance, and interdepartmental coordination duties of OWTP.

5.01.012-3 OWTP Advisory Council

The Office of the City Manager shall appoint an Advisory Council of no less than seven (7) members with knowledge of the many communities vulnerable to wage theft in the City of Cambridge and/or experience in combating wage theft in Cambridge.

The City Manager appointments shall be made as follows:

Two (2) members representing worker centers to be selected from a list of five names provided by the Immigrant Worker Center Collaborative;

One (1) member representing labor organizations to be selected from a list of three names provided by the Greater Boston Central Labor Council, AFL-CIO;

One (1) member representing the business community to be selected from a list of three names provided by the Cambridge Chamber of Commerce;

One (1) member representing the small business community to be chosen by the City Manager or City Council;

Two (2) at-large members to be chosen directly by the City Manager;

All Advisory Council members shall be residents of the City of Cambridge. Vacancies on the Council shall be filled as soon as practicable.

The Advisory Council shall meet with the City Manager or his designees until the Executive Director is appointed on a periodic basis but no less than once a fiscal quarter. Once the Executive Director is appointed, the Council shall meet with the Executive Director on a periodic basis, but no less than once a fiscal quarter. Consultations between the Advisory Council and City Manager or his designees shall include but not be limited to the establishment and operation of the OWTP, its programs, and services. Consultations with the Executive Director shall include, but not be limited to, the continued development OWTP's programs and services, and, in particular, OWTP's community-based outreach programs as set forth in 5.01.014.

5.01.012-4 Powers and Duties of the Office of Wage Theft Prevention

(a) Annual Report to the City Manager

OWTP shall publish an annual report detailing all wage theft complaints received and actions taken by the OWTP in response to such complaints, including specifically the status or final disposition of each complaint. The report shall also include civil and criminal judgments issued by the state and federal courts, administrative citations issued by the Attorney General, and final administrative orders, including but not limited to debarments, against Employers pursuant to G.L. c. 149 §§ 26-27H, 148 and G.L. c. 151 §§ 1, 1A.

(b) Employee Rights Posters and Other Public Awareness Measures

On an annual basis, the OWTP shall publish and provide Employers a notice to be posted informing Employees of Programs and Services of the OWTP and the protections offered by this Ordinance and under applicable state law. The poster shall be available in all languages spoken by more than five (5) percent of the Cambridge work force.

From time to time, the OWTP shall also publish materials, advertise, and perform outreach to raise public awareness concerning the OWTP's programs, compliance with the state's wage and hour laws, and problems associated with wage theft.

(c) Wage Theft Complaints Under Massachusetts Law Generally

OWTP shall receive complaints of violations of state law under G.L. c. 149 §§ 26-27H, 148 and G.L. c. 151 §§ 1, 1A. OWTP shall also assist affected employees in filling out complaint forms at its offices and at City-sponsored events in collaboration with other City departments.

(d) Transmission Of Non-Payment and Prevailing Wage Complaints to Massachusetts Attorney General

Unless otherwise specified in writing by the complainant, OWTP shall transmit each complaint submitted to it pursuant to G.L. c. 149 §§ 26-27H, 148 and G.L. c. 151 to the Commonwealth's Office of the Attorney General as soon as complete but no later than 30 days of receipt. On a Quarterly basis, the City Manager, personally or through a designee, will meet with the Office of the Attorney General to discuss complaints involving City employers and to better coordinate on issues of wage theft in the City.

(e) Voluntary Mediation of Wage Theft Complaints

OWTP shall develop and offer mediation to complainants and their respective employers as a means to efficiently resolve wage theft complaints. This service shall be voluntary, meaning that both parties must agree to use the OWTP to mediate the contents of the complaint in writing.

(f) Public Database of Wage Theft Ordinance Violations

The Office of Wage Theft Prevention shall compile, develop and maintain on the City's website (<https://www.cambridgema.gov/>) a publically accessible, searchable database of criminal

and civil judgments, final state administrative orders and citations under G.L. c. 149 §§ 26-27H, 148 and G.L. c. 151 §§ 1, 1A.

(g) Coordination with City Departments Issuing Permits and Licenses.

At least seven (7) business days preceding any action on a license or permit issued by a City Department [or the following City Departments], OWTP shall receive a notice identifying the action sought, the name and address of the applicant business and all owners of the business. Prior to the Department taking action, the OWTP will notify the Department(s) involved of any civil or criminal judgments, final administrative orders and citations, and/or debarments against the applicant business and/or its owners within the last three (3) years. OWTP will also notify the any relevant City Department(s) of any and all certifications made under this Ordinance (Sec. 5.01) and any pending wage theft complaints received by the City against the applicant and/or its owners.

Upon receipt of a new civil or criminal judgment, final administrative order or citation, and/or debarment against a City license or permit holder, OWTP will provide notice of the same, with a copy of the decision, to the relevant City Department for review and action consistent therewith.

(h) OWTP coordination with City Auditing Department in Monitoring Compliance With City Procurement Requirements.

OWTP shall coordinate oversight of the contracting requirements contained herein (Sec. 5.01.016) with the City Auditing Department.

(i) Wage Theft Complaints Against Employers with Whom the City Holds Contracts for Goods, Services, and/or Labor.

OWTP shall develop a separate form for violations of state law under G.L. c. 149 §§ 26-27H, 148 and G.L. c. 151 §§ 1, 1A committed by Employers holding contracts with the City ("Contractor Wage Theft Forms"). OWTP shall also assist affected employees in filling out both State and Contractor Wage Theft Forms complaint forms at its offices and at City-sponsored events in collaboration with other City departments.

In addition to processing these complaints consistent with Sec. 5.01.012, complaints against City Contractors shall be investigated by OWTP and shall be subject to proceedings as specified in Section 5.01.016 of this Ordinance.

(j) Promulgating Rules and Regulations Consistent with the Purposes of this Ordinance.

OWTP shall, acting on its own and in collaboration with Departments carrying out the provisions of this Ordinance, promulgate rules and regulations to effectuate the purposes of this Ordinance.

Sec. 5.01.013 WAGE BOND REQUIREMENTS FOR CERTAIN PERMITS AND LICENSES

- (a) Any employer admitting in writing to a wage theft violation or subject to a criminal or civil judgment, administrative citation, final administrative determination or debarment as a result of a violation of G.L. c. 149 or c. 151 within the three (3) year period prior to the date of its license and/or permit application [for specific departments or all?], or while the application is pending, shall be required to obtain a wage bond or other form of suitable insurance in an amount equal to the aggregate of one year's gross wages for all employees, based on an average of its total labor costs for the past two years. The bond must be obtained for the duration of the license or permit, and evidence of the same must be provided on request to the City.

- (c) In order to maintain a City permit or license, in the circumstance where an employer admits in writing to a wage theft violation or is subject to a criminal or civil judgment, administrative citation, final administrative determination or debarment as a result of a violation of G.L. c. 149 or c. 151 while the permit/license is in effect, an employer shall be required to obtain a wage bond or other form of suitable insurance in an amount equal to the aggregate of one year's gross wages for all employees, based on an average of its total labor costs for the past two years. The bond must be obtained for the duration of the license or permit, and evidence of the same must be provided on request to the City.

Sec. 5.01.014 OUTREACH TO COMMUNITY ORGANIZATIONS AND BUSINESSES

OWTP shall establish and maintain a multilingual community-based outreach program working with each of the communities vulnerable to wage theft in the City to facilitate public education and the eradication of wage theft.

In partnership with organizations involved in the community-based outreach program, The Office of Wage Theft Prevention shall create outreach multilingual materials that are designed for workers in particular industries and workers living in communities that are particularly vulnerable to wage theft. These materials will be made available in all languages spoken by at least 5% of the Cambridge workforce.

OWTP shall also create multilingual materials on wage theft and provide assistance to employers to facilitate compliance with this Ordinance.

The Office of Wage Theft Prevention shall develop a grant program that shall award grants to organizations it partners with in performing outreach activities.

Sec. 5.01.015 CERTIFICATION AND DISCLOSURES

Every licensing, permitting, procuring, and contracting department in the City shall adopt a certification and disclosure requirement for all applicants providing:

1. That an applicant certify that they have not been subject to a Federal or State criminal or civil judgment, administrative citation, final administrative determination, or debarment resulting from a violation of G.L. c. 149 or c. 151 or the Fair Labor Standards Act within three (3) years of their application;
2. In the alternative, disclosing any such criminal or civil judgment, administrative citation, final administrative determination, or debarment and including a copy of the same in their applications.
3. Every department shall notify applicants that they have an affirmative duty to report any criminal or civil judgment, administrative citation, final administrative determination, or debarment occurring while the license is in effect to the department within five (5) business days of receipt.

Each City Department shall forward a copy of any judgment, order, citation, and/or determination to OWTP within five (5) business days of receipt.

Sec. 5.01.016 CITY PROCUREMENT, CITY CONTRACTS AND DEBARMENT

Sec. 5.01.016-1 RFP and Successful Bidder Requirements

- a. Every RFP issued by the City shall include the certification and disclosure requirements required by Sec. 5.01.015.
- b. Every RFP issued by the City shall notify bidders that they have an affirmative duty to report any criminal or civil judgment, administrative citation, final administrative determination, or debarment occurring while their bid is pending and, if successful, while their contract with the City is in effect within five (5) business days of receipt. The RFP will identify the department and individual to whom this must be reported.
- c. Every RFP issued by the City shall notify bidders that they may not contract with the City if they have been debarred by the Commonwealth of Massachusetts or the City of Cambridge, either voluntarily or involuntarily, for the entire term of the debarment.
- d. Successful bidders must either:
 - i. Provide a certification of compliance as required by Sec. 5.01.015. To the extent the bidder has been in business for less than three years, it shall provide a certification for all time in business and furnish

certifications for any businesses owned by individuals with at least a 25% stake in the bidder.

- ii. To the extent a judgment, citation, or final administrative order has issued against a bidder within 3 years prior to its bid, provide a copy of the same, in addition to documentation demonstrating that all damages, fines, costs, and fees have been paid to all aggrieved complainants. In addition, the bidder must post a bond, to be maintained for the life of the contract, as set forth in Sec. **5.01.016-**.
- e. Successful bidders must provide a certification of compliance for any sub-contractors they plan to utilize in performing their contract(s) with the City as provided in Sec. **5.01.015**. Alternatively, to the extent such a certification cannot be provided by a subcontractor, a successful bidder may provide the information required by Sec. **5.01.016-3**.
- f. Successful bidders must agree to post a notice (as provided in Sec. **5.01.012-4**), provided by the City, in a conspicuous location accessible to all of their employees. To the extent not all employees would not have reasonable access to the notice if posted in a single location by the successful bidder, the successful bidder must specify the number and location of postings required to provide reasonable notice to all of their employees and agree to make those additional postings.

Section 5.01.016-2 Reporting and Notice Requirements During the Contract Term

- a. All City Contractors shall furnish their monthly [certified] payrolls to the City for all employees working on City contracts.
- b. To the extent a contract is for a term of years, a City Contractor will provide a certification compliant with Section **5.01.015** on the effective date of the contract and at each anniversary thereof until the contract expires.
- c. To the extent a contract is for a term of years, a City Contractor utilizing a sub-contractor or sub-contractors in the performance of its contract(s) with the City, whether or not identified in its bid, will provide a certification compliant with Section **5.01.015** upon the effective date of the contract and at each anniversary thereof;

- d. All City Contractors will furnish any criminal or civil judgment, administrative citation, final administrative determination, or debarment issued during the term of their contract(s) with the City against the City Contractor or its sub-contractors within five (5) business days of receipt.
- e. To the extent required as set forth in Sec. **5.01.016** (c) and/or Sec. **5.01.016-3**, maintain a wage bond for the term of the contract(s) with the City.
- f. All City Contractors shall post a notice or notices (as provided in Sec. **5.01.012-4**), consistent with their RFP response.

Section 5.01.016-3 Wage Bonds

Any Successful Bidder or City Contractor admitting in writing to a wage theft violation or subject to a criminal or civil judgment, administrative citation, final administrative determination or debarment as a result of a violation of G.L. c. 149 or c. 151 within the three (3) year period prior to the date of its bid to contract with the City, shall be required to obtain a wage bond or other form of suitable insurance in an amount equal to the aggregate of one year's gross wages for all employees, based on an average of its total labor costs for the past two years. Such bond must be maintained for the entire term of the contract(s) and proof of maintenance must be provided upon request of the City.

Section 5.01.016-4 Suspension or Revocation of Contract/Wage Theft as Material Breach as Conditions in RFP

- a. In the event a wage theft complaint is filed against a City Contractor with OWTP (Sec. **5.01.012-4**), OWTP will perform an investigation, serve notice and provide the City Contractor a hearing consistent with due process.
- b. If after notice and a hearing, the City finds cause by a preponderance of the evidence that the City Contractor is in violation of c. 149 or c. 151, and therefore in breach of its contract with the City, the City will issue an order with one or more of the following remedies:
 - i. Revocation of City Contractor's contract with the City;
 - ii. Suspension of the City Contractor's contract with the City;
 - iii. Debarment from all City contracts for a period of up to three years;
 - iv. Conditions on any future contracts with the City, including but not limited to, the posting of a wage bond (Sec. **5.01.016**) and other reasonable requirements.

5.01.017 SEVERABILITY.

In the event any provision of this Chapter shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

(Ord. ____, Added, _____c. 5.01.016)

5.01.018 EFFECTIVE DATE.

This Chapter shall be effective upon its passage.

(Ord. ____, Added, _____c. 5.01.016)

CM FORM 16**WAGE THEFT PREVENTION**

The City of Boston has established requirements for City contracts in an effort to prevent wage theft. Prospective vendors must provide the following certifications or disclosures with their bids/proposals. Failure to provide the following shall result in rejection of the bid/proposal.

CERTIFICATION

The undersigned certifies under penalties of perjury that the vendor is in compliance with the provisions of the Executive Order titled "Establishing Requirements for City Contracts in an Effort to Prevent Wage Theft," as currently in effect. **All Vendors must certify the following:**

1. ☐ Neither this firm nor any subcontractor has been subject to a federal or state criminal or civil judgment, administrative citation, final administrative determination, order or debarment resulting from a violation of G.L. c149, c151, or the Fair Labor Standards Act within three (3) years prior to the date of this bid/proposal submission.
2. ☐ This firm, or a subcontractor of this firm, has been subject to a federal or state criminal or civil judgment, administrative citation, final administrative determination, order or debarment resulting from a violation of G.L. c149, c151, or the Fair Labor Standards Act within three (3) years prior to the date of this bid/proposal submission and such documentation is included in the bid/proposal submission.
3. Any federal or state criminal or civil judgment, administrative citation, final administrative determination, order or debarment resulting from a violation of G.L. c149, c151, or the Fair Labor Standards Act imposed while any bid/proposal is pending and, if awarded a contract, during the term of the contract, will be reported to the Official within five (5) days of receiving notice.
4. Vendors awarded a contract that have disclosed a federal or state, criminal or civil judgment, administrative citation, final administrative determination, or order resulting from a violation of G.L. c149, c151, or the Fair Labor Standards Act within three (3) years prior to the date of this bid/proposal, or during the term of the contract and through the contract term shall furnish their monthly certified payrolls to the Official for all employees working on such contract and may be required to obtain a wage bond or other suitable insurance in an amount equal to the aggregate of one year's gross wages for all employees. Vendors subject to a state or

federal debarment for violation of the above laws or prohibited from contracting with the Commonwealth are prohibited from contracting with the City, and upon a finding or order of debarment or prohibition, the City may terminate the contract.

5. Notice provided by the City, informing employees of the protections of the Order and applicable local, state, and federal law will be posted in conspicuous places.

(Typed or printed name of person signing
quotation, bid or proposal)

Signature

(Name of Business)

Instructions for Completing CM Form 16:

A vendor must check box 1 or box 2 as applicable and must sign this Form, certifying compliance with the requirements set out in this Form. This Form must be included with the bid or proposal, and for multi-year contracts must be completed annually on the contract anniversary.

Pursuant to the above mentioned Executive Order, vendors who have been awarded a contract with the City of Boston must post the Massachusetts Wage and Hour Laws notice informing employees of the protections of G.L. c. 149, c. 151, and the Fair Labor Standards Act in conspicuous places. This notice can be found at:

<http://www.mass.gov/ago/docs/workplace/wage/wagehourposter.pdf>